



OFFICE OF STATE PLANNING and ENERGY PROGRAMS

STATE OF NEW HAMPSHIRE

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August 8, 2003

Mr. John King
Chief, Coastal Programs Division
NOAA, Office of Ocean & Coastal Resource Management
1305 East-West Highway, SSMC4
Silver Springs, MD 20910

Dear Mr. King:

The New Hampshire Coastal Program submits this Routine Program Change (RPC) for your approval under Section 306 of the Federal Coastal Zone Management Act.

This RPC primarily includes statutory updates to our enforceable references from 2001 and 2002. We made a change to one of our enforceable policies (#13 of 16), as a result of a modification of our wetlands law. The RPC was developed using 15 C.F.R. § 923.84 and the 1996 OCRM guidance document. We consider this program change to be "routine" and not a program amendment. An electronic copy of the text and appendices has been sent to Masi Okasaki.

Brian Mazerski, federal consistency coordinator, is the point of contact for this RPC. He coordinated it with OCRM staff before submission. You can reach him at (603) 431-9366, if there are any questions.

Sincerely,

David Hartman

Program Manager

DH/BM:mal

Enclosure: NHCP RPC 2003

NEW HAMPSHIRE COASTAL PROGRAM

ROUTINE PROGRAM CHANGE (RPC)

The Office of State Planning and Energy Programs-New Hampshire Coastal Program (NHCP) formally submits to the Office of Ocean and Coastal Resource Management (OCRM) a Routine Program Change to the NH Coastal Management Program. The change consists of statute changes made by the 2001 and 2002 sessions of our legislature, and some other changes. This RPC follows the 2001 RPC submission which updated statutes from the period 1996 through 2000. Additionally, this RPC changes the text of NHCP's Policy #13, as it relates to over-water structures, to correlate the policy to the revised text of RSA 482-A:26. This RPC does not include any updates to administrative rules. There is no change in Federally Excluded Land designation.

1. LIST OF PROPOSED CHANGES, LEGISLATIVE YEAR, TYPE OF CHANGE, APPENDIX WHERE TEXT OF STATUTE IS FOUND:

<u>Statute Changed</u>	<u>Legislative Year</u>	<u>Type of Change</u>	<u>Appendix</u>
RSA 12-G:1, 2, 3, 39, 42, 43, 45, 46	2001	Addition	1
RSA 230:13	1992	Addition	2
RSA 271-A:2-4, 13, 20-21	2001	Deletion (Repealed)	none
RSA 21-O:5-a	2002	Change	3
RSA 79:10	2001	Change	4
RSA 125-C:2,4,6	2001	Change	5
RSA 146-A:12	2002	Change	6
RSA 162-C:1, 2	2001	Change	7
RSA 162-H:3	2002	Change	8
RSA 211:19-a, 62-c, 64-b	2001	Change	9
RSA 227-H:5	2002	Change	10
RSA 270-D:2,2-a,2-b,2-c,10,11, 13,14,17,19	2002	Change	11
RSA 430:31-b	2001	Change	12
RSA 482-A:2,3*,11,26^&	2001*/2002 1998^	Change	13
RSA 483:15	2002	Change	14
RSA 483-B:1,4,6,9,11,12*, 17,18,19,20	2001*/2002	Change	15
RSA 485:4,24,41	2002	Change	16
RSA 485-A:4,6,30*	2001*/2002	Change	17
RSA 674:36	2002	Change	18

For most of the above statute changes (exception is "&" - RSA 482-A:26; see Paragraph 3), there is no alteration of the 16 enforceable policies of the NHCP. For full wording of each applicable statute (change), see the corresponding Appendix for old/new comparison text.

2. ANALYSIS/EXPLANATION OF WHY CHANGES ARE NOT SUBSTANTIAL:

In each subparagraph below, this document lists the applicable policies and page numbers (July 1988 Final EIS document) for each statute involved in this change. The *italicized analysis* language is derived from the legislation. See each Appendix for corresponding text of the statutes, with color-coding to reflect changes. *Blue italicized* represents new language; ~~red strike-through~~ reflects text that has been replaced/deleted. Lastly in Section 2's text, each subparagraph closes with a brief discussion of why the change is not substantial in the respective program approvability areas,

ADDITIONS:

a.

RSA 12-G (Add in lieu of RSA 271-A)

Sections: 1,2,3,39,42,43,45,46

Applicable Policies: 3,7,13,14

Page Numbers: 3-11,3-22,3-55, 3-57

AMENDED ANALYSIS: This act establishes the division of ports and harbors within the Pease development authority under the supervision of the director of ports and harbors, and transfers all functions, powers, and duties of the New Hampshire state port authority to the newly established division.

See complete text of RSA 12-G at Appendix 1.

Discussion: The statute effectively eliminates the term "NH State Port Authority" in favor of the "Division of Ports and Harbors (DPH)" in the Pease Development Authority (PDA). The former port authority, which was described in former RSA 271-A, retained all its responsibilities following the realignment. From this statute recodification relative to said realignment, RSA 12-G (Pease Development Authority) now adds sections drawn from the responsibilities of the former port authority (RSA 271-A, which is repealed). Inclusion of the eight sections (relative to port operations) of RSA 12-G in the NHCP is warranted.

Recodification is as follows:

- Add RSA 12-G: 1 (Declaration of Purpose), 2 (Definitions), and 3 (Pease Development Authority Established). As a general format for NH statutes, Section 1 incorporates the *purpose* of the PDA and its DPH (related to former RSA 271-A:2). Section 2, also in the general format, defines PDA terms and authorities – "Definitions", several of which relate to the DPH. Section 3 establishes the PDA, and sub-section IV transfers the existing contractual functions implied under the former RSA 271-A to the PDA, as a result of the realignment to include port functions. While these sections do not include specific text found in the former RSA 271-A, inclusion of sections 1,2, and 3 is needed to tie the former state port authority (now DPH) to the Pease Development Authority.
- Add RSA 12-G:39 (Acquisition of Land for Port Purposes). This section corresponds to RSA 271-A:13, which has been repealed.
- Add RSA 12-G:42 (Additional Powers and Duties). This section combines the former RSA 271-A:3 and 4 (since repealed) to include rule-making provisions.

- Add RSA 12-G:43 (Division of Ports and Harbors). This section incorporates the “purposes” listed in the former RSA 271-A:2 (since repealed); the section also includes the responsibilities of the DPH director, with whom the NH Coastal Program often coordinates on port-related matters.
- Add RSA 12-G:45 (Dredge Management in Tidal Waters). This section replaces the former RSA 271-A:20 (since repealed).
- Add RSA 12-G:46 (Harbor Dredging and Pier Maintenance Fund Established). This section incorporates the former RSA 271-A:21 (since repealed), and also addresses pier management, a topic listed in the former RSA 271-A:13 (since repealed).

In sum, addition of the indicated sections of RSA 12-G will recodify language from a repealed statute (RSA 271-A) and define the role of the Pease Development Authority’s Division of Ports and Harbors – in lieu of the NH State Port Authority - in the NH Coastal Program. This change is minor in the *authorities and organization* approvability area.

b.

RSA 230:13 Add

Applicable policy: 8

Page Number: 3-36

See complete text of RSA 230:13 at Appendix 2.

Discussion: The original NHCP implementation (1982) included a statute “Layout of Highways to Public Waters” (RSA 235). In the 1988 NHCP FEIS document, that reference changed to RSA 230:63. RSA 230:63 was repealed in 1992 because there was no longer a need for a separate “layout” in relation to public waters. Rather, the statute’s section 13 applied to layout in all situations across the state of NH. When NHCP submitted its 2001 RPC, Section 63 of RSA 230 was deleted. However, NOAA/OCRM’s 22 Jan 03 approval letter for NHCP’s RPC suggested that NHCP replace the repealed section (63) with RSA 230:13 because the original approval of the NHCP provided for a section on the topic “layout.” Addition of RSA 230:13 will correct an omission and thus is a minor change in the *uses subject to management* approvability area.

DELETIONS:

c.

RSA 271-A (Delete)

Sections: 2-4,13,20,21

Applicable policies: 3,7,13,14

Page Numbers: 3-11,3-22,3-55, 3-57

Repeal. RSA 271-A, relative to the New Hampshire state port authority, is repealed.

Discussion: See RSA 12-G discussion above in sub-para 2.a. Because the responsibilities of the former NH State Port Authority were recodified into the Division of Ports and Harbors of the Pease Development Authority, RSA 271-A is no longer needed in or useful to the NHCP. Due to statute replacement, this change is minor in the *authorities and organization* program approvability area. (Note: text of RSA 271-A was provided in the 2001 RPC; that is the text which is deleted.)

CHANGES:

d.

RSA 21-O:5-a Change

Applicable policy: 1

Page Numbers: 3-36

See complete text of RSA 21-O:5-a at Appendix 3.

AMENDED ANALYSIS: This act changes the membership of the wetlands council.

Discussion: The change qualifies the membership of the Wetlands Council. It replaced the environmental services (DES) representative on the council with one from the agriculture department to avoid any sense of conflict of interest, because the Council itself advises the commissioner of DES. The change upped the number of public appointees from six to seven reps, including one new one from the field of natural resource scientists. The change also qualified the criteria of the reps from the construction industry and the marine industry. These changes reflect internal adjustments to staffing of NH state government operations. Such staff changes enhance the environmental considerations for coastal and other wetlands issues in the state. There is no negative impact on Wetlands Council operations which continue to support the NHCP. This change is minor in the *authorities and organization* program approvability area.

e.

RSA 79:10 Change

Applicable policy: 8

Page Numbers: 3-36

See complete text of RSA 79:10 at Appendix 4.

ANALYSIS: This act repeals the appeal board for appeal of a timber yield tax assessment and allows for appeal to the board of tax and land appeals. This bill also changes the procedure for assignment of an operation number for notice of intent to cut.

Discussion: This change is in administrative procedures dealing with forestry management, specifically in how operation numbers are assigned for notice of intent to cut. Such a change has no detrimental impact on coastal nonpoint pollution prevention, the area under which this statute was incorporated, because the cutting restrictions are maintained. This change is considered minor in the *uses subject to management* program approvability area.

f.

RSA 125-C:2,4,6

Change

Applicable policies: 10,11

Page Numbers: 3-42, 3-45

AMENDED ANALYSIS: An act relative to the sale of gasoline containing ethers and establishing a gasoline remediation and elimination of ethers fund.

See complete text of RSA 125-C:2,4, and 6 at Appendix 5.

Discussion: Through House Bill 758 (Hb 758), the NH Legislature voted to minimize the contamination of water resources and to protect the public from potentially harmful health effects by dramatically reducing or eliminating the amount of methyl tertiary-butyl ether (MTBE) and other ethers in gasoline supplied to New Hampshire. Since the oxygen mandate specified for federal reformulated gasoline (RFG) by the Clean Air Act has led to a dramatic increase in MTBE concentrations in gasoline, the Legislature decided to opt out of the federal RFG program and then limit or ban MTBE and other ethers as the most effective ways to permanently reduce the concentrations of MTBE and other ethers in gasoline sold in New Hampshire. The Environmental Protection Agency may require the state of NH to make up for emission reductions lost as a result of this action, and the NH Legislature provided authorization to do so. The discovery of MTBE contamination in several drinking water sources in the state (including some in the coastal zone) caused NH to take this action.

The changes (addition of sub-paras to Sections 2, 4, and 6) affect the control of air pollution relative to (consumer) products related to the topics introduced in Hb 758. The added sub-paras are considered enhancements to the existing statutory guidance, in accordance with existing NH controls of air pollutants. There is no degradation of air quality standards. RSA 125-C:6 references the Clean Air Act (CAA), specifically to ensure that controls on “consumer products” reflect at least the minimum standards of the CAA. All three RSA 125-C section changes correspond to each other. Hence the changes are considered minor in the *uses subject to management* program approvability area.

g.
RSA 146-A:12 **Change**

Applicable policies: 1,4,11
Page Numbers: 3-8, 3-13, 3-45

AMENDED ANALYSIS: This act transfers the office of emergency management to the department of safety, division of fire safety and emergency management and establishes an advisory council on emergency preparedness and security, formerly the emergency management advisory council.

See complete text of RSA 146-A:12 at Appendix 6.

Discussion: In the post-911 world, NH, like many states, has reorganized its emergency management procedures and staffing. This section of RSA 146-A deals with an emergency proclamation by the governor in relation to oil discharge. The change is to the reference for safety and emergency management staff responsibilities, replacing RSA 107-C by references to the RSA 4 and 21-P series statutes. The former RSA 107-C (since repealed) was listed in the NHCP (1988 FEIS) as an “enhancement” (not an enforceable) reference. RSAs 4 and 21-P can similarly be considered enhancement references, but their incorporation is not necessary in the NHCP. Update of RSA 146-A’s references represents a change in how the management program is implemented, but is a technical correction and thus not a substantial change. The change is minor in the *authorities and organization* program approvability area.

h.

RSA 162-C:1,2

Change

Applicable policies: 8,15

Page Numbers: 3-36, 3-63

ANALYSIS: This act changes the membership requirements and duties of the council on resources and development.

See complete text of RSA 162-C:1 and 2 at Appendix 7.

Discussion: Section 1 adds two state agency department heads to the Council on Resources and Development (CORD) – reflecting the state government hierarchy. Section 1 also provides for substitution of key alternates for primary CORD members. The changes facilitate CORD assembly and enable full representation by appropriate agencies. These changes reflect internal adjustments to staffing of NH state government operations. The restructured CORD will continue to provide coastal program coordination among state agencies, since the Office of State Planning continues to “chair” the council. Section 2’s additions (sub-paras X to XII) reflect additional responsibilities per the governor’s planning guidance regarding smart growth and long-range planning considerations. All current responsibilities, as they relate to coastal and environmental protection issues, are maintained without change. The statute changes are minor in the *authorities and organization* program approvability area.

i.

RSA 162-H:3 **Change**

Applicable policies: 8,15

Page Numbers: 3-36, 3-63

AMENDED ANALYSIS: This act permits the public utilities commissioners to designate a staff engineer for membership on the site evaluation committee.

See complete text of RSA 162-H:3 at Appendix 8.

Discussion: To prevent delay in seating the Site Evaluation Committee (SEC), in the absence of the chief engineer of the utilities commission, the change allows the commissioners of the public utilities commission to designate an appropriate staff (not necessarily the “chief”) engineer to sit on the SEC. The SEC continues to perform business as usual – with appropriate technical input from a qualified engineer. This clarification to the statute (RSA 162-H:3) represents a change in how the management program is implemented, but is not a substantial change, and is thus minor in the *authorities and organization* program approvability area.

j.

RSA 211:19-a,62-c,64-b

Change

Applicable policies: 2,13

Page Numbers: 3-10, 3-55

ANALYSIS I. (Sections 19-a, 62-c) This act establishes the division of ports and harbors within the Pease development authority under the supervision of the director of ports and harbors, and transfers all functions, powers, and duties of the New Hampshire state port authority to the newly established division. II. (Section 64-b) This act increases the fees for certain resident and nonresident hunting and fishing licenses in both 2002 and 2003. This act also repeals certain licenses and adds a one-day nonresident fishing license.

See complete text of RSA 211:19-a, 62-c and 64-b at Appendix 9.

Discussion: Two separate pieces of legislation rendered changes to this statute on Fish, Shellfish, Lobsters, and Clams. The changes to sections 19-a and 62-c are codifications related to the realignment of the former NH State Port Authority (see discussion on RSA 12-G above). The changes to section 64-b are administrative ones with fee increases, one for 2002 and one for 2003, for clam licenses (The previous fee [\$20] was set in 1995). The NH Fish and Game Department will continue to manage marine species through normal practices. The first two changes (19-a and 62-c) are minor ones in the *authorities and organization* program approvability area. The last change (64-b's fee increases) is also a minor change in the *uses subject to management* program approvability area.

k.

RSA 227-H:5

Change

Applicable policy: 8
Page Numbers: 3-36

ANALYSIS This act: I. Makes a bonded appropriation to the governor to provide funds to purchase certain property and interests in property in Pittsburg, Clarksville, and Stewartstown, New Hampshire and establishes endowments for monitoring, stewardship, and road maintenance of the property. II. Establishes a committee to provide advice relative to management of the property. III. Authorizes state agencies to hold certain rights under the New Hampshire land and community heritage investment program.

See complete text of RSA 227-H:5 at Appendix 10.

Discussion: RSA 227-H and the other "forestry-related" statutes (227 series) were added to the NHCP in 1996. This change adds some forest tracts to this section of RSA 227-H:5 (Land to be Retained). This time the added sub-paragraphs are not in the NH coastal zone, but NHCP seeks to maintain the complete currency of this statute for future reference. The potential exists for lands in the NHCP area to be added to the list in RSA 227-H; hence the need for currency of the relative statute section. The change is thus a minor one in the *uses subject to management* program approvability area.

1.

RSA 270-D:2,2-a,2-b,2-c,
10,11,13,14,17,19

Change

Applicable policies: 7,13,14
Page Numbers: 3-22, 3-55, 3-57

AMENDED ANALYSIS. This act:

- I. Makes laws relative to safe boater education and the minimum age of operation of motorized vessels apply only to the operation of vessels with greater than 25 horsepower. Currently, these laws apply only to the operation of vessels with greater than 15 horsepower.*
- II. Limits when a person under 16 years of age may not operate a motorized vessel.*
- III. Limits the issuance of safe boater certificates to persons 16 years of age or older.*
- IV. Directs certain fees to the navigation safety fund.*
- V. Requires the department of safety to submit an annual report on the division of safety services.*
- VI. Eliminates the boat safety fund.*
- VII. Eliminates the boating safety registration checklist.*
- VIII. Defines "boat slip" and "structure" for purposes of the fill and dredge in wetlands laws.*
- IX. Exempts temporary seasonal docks from the excavating and dredging permit requirement.*
- X. Modifies the requirements for the repair and reconstruction of certain dwellings over water.*
- XI. Establishes an exception to the headway speed requirement for portions of the Androscoggin and Magalloway Rivers.*
- XII. Requires the commissioner of environmental services to adopt rules relative to fill and dredge in wetlands which establish an expedited application and permitting process and which identify fill and dredge activities which RSA 482-A exempts from the permitting requirements.*

See complete text of RSA 270-D changes at Appendix 11.

Discussion: All of the statute's changed sections were just added during NHCP's 2001 RPC (approved Jan 2003). The Department of Safety's Boating Education section, part of the Division of Safety Services, is the catalyst for most of the following changes:

- RSA 270-D:2 adds a sub-paragraph (d) under "VI." The addition is an exception to the criteria for "no wake zones" in two northern NH rivers. The legislature agreed to petitions from local boaters to ease no wake restrictions in those river corridors. Addition of this sub-para has no impact on the NHCP, other than maintenance of the currency of section 2 of RSA 270-D, of which the entire contents are contained in the NHCP.
- RSA 270-D:2-a's change is removal of a phrase specifying the source of fees for publishing the boaters' guide. Rather than charge additional fees [which was the case for the first year of the guide's existence], the legislature opted to fund the guide from the general fund which is served by boater registration fees.
- RSA 270-D:2-b "Revolving Fund Established" is deleted (repealed). This relates to the change in funding source for the boaters guide (see bullet immediately above this one). Since the legislature saw fit to simplify accounting, there is no need for a special fund in the NHCP.
- RSA 270-D:2-c. This change eliminates the requirement for a boat registrant to initial a safety checklist upon each registration. In the absence of a mandatory boater

registration law, each (rental) operator must be certified by use of the rental checklist. According to the Safety Services Division Director, the state of NH is currently in the second year of a 7-year phased process for boat registration. All boat registrants must obtain the requisite safety information, pass a test, and (if renting out a boat) determine whether each renter has reviewed the rental safety checklist. This change puts the onus on registered owners to ensure boating safety considerations are understood to make waterways safer. The change simplifies registration without sacrificing safety considerations.

- RSA 270-D:10 and 11 qualify the minimum age (16) for operation of a >25 horsepower boat in NH waters and mandate that the operator possess a certificate. Youths <16 years of age may operate a smaller-sized boat without said certificate. This change represents a clarification which was not documented in previous legislation.
- RSA 270-D: 13, 14 and 19 similarly document the 16-year age minimum for recipients of a safe boater education certificate and describe who can attend such education courses. This revision too is a necessary clarification.
- RSA 270-D:17 distinguishes between fees for permanent and temporary boater education certificates, identifies the maximum charge possible, and states where fees are deposited. Such changes to this section reflect a clear delineation of the fee schedule for boater safety certification.

In each of the above sections, the extent of all changes reflects the Department of Safety's "housekeeping" of the statute. The previous legislation (2000) left some areas vague, in need of clarification. This legislation, with the changes in the indicated sections listed above, acts to fill in the information gaps. Not one of the changes degrades the safety situation on NH coastal waterways. Rather, safety is enhanced. Because the changes are primarily administrative updates of boating safety guidance, each of these statute changes is considered to be minor in the *uses subject to management* program approvability area.

m.

RSA 430 Change

Applicable policies: 1, 2,11

Page Numbers: 3-8, 3-10, 3-45

AMENDED ANALYSIS: This act establishes a pesticides training program for the purpose of providing education regarding pesticides and the handling of pesticides to commercial pesticide applicators and other applicable persons. This act establishes a pesticides training program fund to support the purposes of the training program and establishes certain reporting and budgeting requirements for the department of agriculture, markets, and food. Moneys for the fund shall be established by rule by the commissioner of agriculture, markets, and food and collected from program participants.

See complete text of RSA 430:31-b at Appendix 12.

Discussion: In 2001, the Auto-Incorporation of Coastal Nonpoint Pollution Control Program references added RSA 430:28-48 (Inclusive) to the NH Coastal Program. The legislature, in its designation and start up of a pesticides training program, made it a subset of RSA 430:31 (Pesticide Control) Board Responsibility and Authority – which is already part of the NHCP. The new training program enhances protection of NH resources by clearly defining an educational process to help businesses meet the requirements of RSA 430. The training program facilitates implementation while supporting existing enforcement efforts. The legislation also outlines the funding of the program and specifies the oversight reporting required. NHCP considers this (sub)section's addition to be a minor change in the *uses subject to management* program approvability area.

n.

RSA 482-A:2,3,11,26 Change

Applicable policies: 1, 2, 3, 8, 9, 11, 13, 14

Page Numbers: 3-8, 3-10, 3-11, 3-36, 3-41, 3-45, 3-55, 3-57

ANALYSIS: (Section 26, 1998) An act relative to dwellings which extend over public waters. (Section 3, 2001) This act establishes maximum fees for excavating and dredging permit applications by municipalities. (Sections 2,3,11 and 26, 2002) I. Defines "boat slip" and "structure" for purposes of the fill and dredge in wetlands laws. II. Exempts temporary seasonal docks from the excavating and dredging permit requirement. III. Requires the commissioner of environmental services to adopt rules relative to fill and dredge in wetlands which establish an expedited application and permitting process and which identify fill and dredge activities which RSA 482-A exempts from the permitting requirements. IV. Modifies the requirements for the repair and reconstruction of certain dwellings over water.

See complete text of RSA 482-A changes at Appendix 13.

Chronological Discussion: The 1998 change to RSA 482-A:26 was not approved by OCRM in the 2001 NHCP RPC submission due to an unresolved conflict with Policy #13 of the NHCP. In addition to description of the statute change, this RPC proposes a policy change (See analysis in Paragraph 3 below). Discussion of the statute changes (1998 to 2002) follows:

- RSA 482-A:26 (1998). Prior to 1998, section 26 of RSA 482-A was entitled "Residential Use Prohibited" and it banned any new construction of or modification to existing over-water structures. In fact, there were six such structures over tidal waters in NH before 1989. This small constituency (owners) successfully petitioned NH legislators to allow maintenance of existing structures, including three dwellings, with provisions in sub-para III. Only maintenance work in the water would need a wetlands permit. The legislation prevented creation of further dwellings, and maintained penalties for violations of RSA 482-A:26. The section was re-titled "Dwellings Over Water" which is more comprehensive. This statute change necessitates a look at NHCP Policy #13 on "Coastal Dependent Uses" because of conflicting wording (See discussion in Paragraph 3 below). While incorporation of this 1998 statute update might be considered a *major* change in the use (structures)

subject to management, the impacts are limited. NHCP considers this change to be a correction that recognizes a previous oversight from when the NHCP was last approved in 1988. By acknowledging the presence of existing over-water structures (6, including 3 as dwellings) in tidal waters and allowing for their upkeep, NH corrects its "coastal inventory" which was incomplete in 1988. Thus, NHCP considers the effects of this change to be minor in the *uses subject to management* program approvability area, when considered with the Policy update. The change corrects the status quo.

- RSA 482-A:3 (2001). Legislation introduced a provision [sub-para X(b)] to cap fees the state can charge a municipality for a wetlands permit in dredging tidal waters. This change resulted from the submission by the Army Corps of Engineers of a sizeable dredging project in a tidal river. The municipality successfully petitioned the legislature to set the fee limit. The fee schedule is primarily intended to limit the scope of private dredging projects. By this change, municipalities are not burdened with excessive fees to permit allowable federal dredging projects for navigation. This change is a minor one in the *uses subject to management* program approvability area.
- RSA 482-A:2 (2002). The legislation is the same act which updated RSA 270-D (Boating & Water Safety) in para 2.1. above. The change adds definitions for "boat slip" and "structure" to RSA 482-A so that wetlands permittees have appropriate information on facilities for boaters, when permit decisions are required. This change contributes to improved access to NH tidal waters and it harmonizes boating safety issues. NHCP considers this change to be minor in the *uses subject to management* program approvability area.
- RSA 482-A:3 (2002). This change adds text (sub-para IV-a) about seasonal docks on lakes/ponds and exempts such docks from wetlands permitting. This change also supports the boater community and improves access without over-regulation. The NH coastal zone has a handful of such lakes/ponds for which this text applies. The change is not applicable to tidal waterways. NHCP considers this change to be minor in the *uses subject to management* program approvability area.
- RSA 482-A:11 (2002). The legislation expands the rule-making capacity of the Department of Environmental Services for such areas previously discussed: activities exempted from wetlands permitting (See RSA 482-A:3 discussion in previous bullet) by adding sub-para VII to 482-A:11 and for over-water structure maintenance (See RSA 482-A:26 discussion in first bullet in this series). This change also revises the terminology of sub-para VI, and subsequently sub-para III, regarding "minimum impact" projects and permitting requirements. The primary changes to RSA 482-A, sections 3 and 26, are the catalysts to this change to section 11, which deals with subsequent rule-making authority. The change is an adjunct to the primary changes and is thus considered to be minor in the *uses subject to management* program approvability area.
- RSA 482-A:26 (2002). The change adds sub-para III.b. which supplements the guidance in sub-para III (now III.a.), added in 1998 to allow repair of existing over-water dwellings (See first bullet above). The text is helpful in trying to encourage the elimination of existing dwellings. Thus, the change is supportive of the intent to have over-water structures be "water-dependent." NHCP considers this change to be minor in the *uses subject to management* program approvability area.

In summary, one change (482-A:26) triggers a change in one of the NHCP policies (see Paragraph 3). As indicated in each bullet, all changes are minor.

o.

RSA 483:15

Change

Applicable policies: 1,11

Page Numbers: 3-8, 3-45

ANALYSIS: AN ACT designating segments of the Isinglass River as protected under the rivers management and protection program.

See complete text of RSA 483:15 changes at Appendix 14.

Discussion: The NH Legislature designated the Isinglass River a protected river, because of its pristine characteristics. The river is in the coastal watershed and is a tributary of the Cocheco River, one of NH's tidal rivers. Addition of the Isinglass to this statute confers the same recreational, historical, environmental and other protections (under RSA 483) that have already been afforded to the Exeter and the Lamphrey Rivers in the NH Coastal Zone. Such designation will help in nonpoint source pollution prevention. The statute change is a minor one in the uses subject to management program approvability area.

p.

RSA 483-B:1,4,6,9

Change

Applicable policies: 1, 8, 9, 11

11,12,17-20

Page Numbers: 3-8, 3-36, 3-41, 3-45

ANALYSIS: I. (Section 12, 2001) This act establishes the division of ports and harbors within the Pease development authority under the supervision of the director of ports and harbors, and transfers all functions, powers, and duties of the New Hampshire state port authority to the newly established division. II. (Section 20, 2002) This act reestablishes the set back line for primary structures within the protected shoreland and allows a municipality having a lesser setback, established prior to January 1, 2002, to maintain the defined primary building line in that municipality. It also extends the provisions of the Shoreland Protection Act to the Connecticut River. III. (Sections 4, 18; 2002) AN ACT relative to fines for violations of the shoreland protection act. IV. (Sections 1,4,6,9,11,17,19; 2002) AN ACT relative to the shoreland protection act.

See complete text of RSA 483-B's changes at Appendix 15.

Chronological Discussion: The complete RSA 483-B (Comprehensive Shoreland Protection Act) was added to the NHCP by the RPI in 1996, and updated through AutoIncorporation in 2001. Besides one change in 2001, the NH Legislature finalized three different pieces of legislation regarding the Shoreland Protection Act in 2002.

- (Section 12, 2001) This change is an administrative update following recodification of the NH State Port Authority to the Division of Ports and Harbors under the Pease Development Authority, as discussed above in para 2.a. (RSA 12-G). The change is a minor one in the *authorities and organization* program approvability area.
- (Section 20, 2002) This specific change does not directly relate to the NHCP, but the change is proposed to maintain full currency of the statute. Section 20 exempts all NH designated rivers but the Connecticut River (not in the NHCP watershed) from shoreland protection requirements prior to 1993. The Connecticut had been designated long ago for shoreland protection and DES had staffing to implement a program, while other rivers more recently designated were bound only by the post-1993 protection requirements. The change is a minor one in the *uses subject to management* program approvability area.
- (Sections 4 and 18, 2002) The change mandates a \$5000 administrative fine for each violation of the statute.
 - Section 4's change defines the criteria for "repeat" violation.
 - Section 18 also increases the fine for repeat violations by a factor of 2.

The NH Legislature intends to fully support the established shoreland protection requirements by substantial fines and has the prerogative to impose such fines. The change is a minor one in the *authorities and organization* program approvability area.

- (Sections 1,4,6,9,11,17,19; 2002) Each section is changed as follows:
 - Section 1 adds a sub-para (I-a) describing the importance of a "natural woodland buffer" in protecting shoreland and thus water quality (prevent nonpoint source pollution). This wording dovetails with existing NHCP policies for water quality and preservation of the Great Bay estuary. The change is minor in the *uses subject to management* program approvability area.
 - Section 4 has several changes/additions to existing definitions. With the exception of addition of the definition "shoreland frontage" (a means to describe relevant shoreline) and a change to "lot of record" (clarification of the legal basis), all other changes relate to the term "structure" – as they impact shoreland protection requirements. Changes made to "accessory structure" and "primary structure" definitions help distinguish them from the broader term "structure." Added definitions ("repair," "replace in kind," "replacement system," and "water dependent structure") all help define specific aspects of shoreland protection. "Water dependent structure" is helpful in relation to RSA 482-A:26 (Dwellings over water) and the change in NHCP Policy #13. Because of improvements in scientific methods in this area, the changes are a cumulative refinement of shoreland protection impacts. Overall, the change to this statute section is minor in the *uses subject to management* program approvability area.
 - Section 6 has a slight change in deletion of a phrase relating to residential/non-residential development. These terms are further and fully described in the next sub-bullet (Section 9). This change is minor in the *uses subject to management* program approvability area.

- Section 9 has several revisions to standards for shoreland protection. It scales back discussion of “primary structures” which was added to Section 4 (definitions). The main body of changes helps clarify standards for the “natural woodland buffer,” links the relationship of “erosion and siltation” to RSA 485-A (included in NHCP), and realigns some wording regarding “septic systems.” There are other administrative and grammatical corrections. The changes are improvements to the standards for shoreland protection, but are minor in scope in the *uses subject to management* program approvability area.
- Section 11’s (Non-conforming structures) language was beefed up to include provisions for repair, and, more importantly, how to get such structures into compliance with shoreland protection requirements. Previous terminology (septic systems, repairs, etc.) in the above-listed changes applies here to improve the manner of shoreland protection to structures built before July 1, 1994. The change thoroughly describes standards, but is *minor* in scope because it is an enhancement to the already-existing discussion on the topic of non-conforming structures. Thus this change is minor in the *uses subject to management* program approvability area.
- Section 17 adds provisions by the commissioner of DES for rule-making authority in newly described areas such as woodland buffers, construction, and other terms not previously defined in the existing statute. The changes track with the revisions to the other sections of RSA 483-B discussed above. This is a minor change in the *uses subject to management* program approvability area.
- Section 19 adds language to allow for any municipality to use any local ordinances for shoreland protection it may have, provided that the more stringent standards (RSA 483-B or the local) apply. This is a clarification of an existing alternative to state-regulated shoreland management; this change is minor in the *uses subject to management* program approvability area.

In sum, the specific changes are described above. Each change is considered minor and the cumulative effect of RSA 483-B changes is also minor in the *authorities and organization/uses subject to management* program approvability areas, as indicated.

q.

RSA 485:4,24,41

Change

Applicable policies: 1,11

Page Numbers: 3-8, 3-45

I. (Sections 4 and 24) AN ACT relative to the protection of public water supplies during emergency conditions and establishing a committee to study the formation of regional water systems and the eligibility of such systems for state construction grants. II. (Section 41) AN ACT relative to the adoption of a state building code.

See complete text of RSA 485’s changes at Appendix 16.

Discussion: There were two pieces of legislation about RSA 485, related to NHCP references, adopted by the NH Legislature in 2002. Specific changes are as follows:

- (Section 4) The change added a lengthy sub-para II in the section "Power to Require Improvements." The addition deals with multiple complaint situations involving a public water system and the actions to be taken. A definite enhancement, the change addresses a previous "gray area" which falls within the purview of NH DES in the interests of public safety. The change is minor in the *uses subject to management* program approvability area.
- (Section 24) Minor administrative reference update.
- (Section 41) The change replaces a reference to plumbing codes, a minor technical fix.

Aside from the last two technical updates, the main change to RSA 485 occurs in Section 4 with the detailed reference to DES actions involving multiple user complaints to public water systems. The change is not a new use, rather a refinement of the existing use subject to management. Thus the change is not substantial in the *uses subject to management* approvability area.

r.

RSA 485-A:4,6,30 Change

Applicable policies: 1, 3, 8, 9, 11, 14

Page Numbers: 3-8, 3-11, 3-36, 3-41, 3-45, 3-57

ANALYSIS I. (Sections 4 and 6) This act requires dentists and the department of health and human services to provide information on restorative dental materials, and requires the department of environmental services to adopt rules for the disposal of mercury amalgam waste in an environmentally-appropriate manner. II. (Section 30) AN ACT increasing the fees under the laws relative to sewage disposal systems to support a position at the department of environmental services to advocate for and implement long-term septage disposal solutions in partnership with New Hampshire municipalities.

See complete text of RSA 485-A's changes at Appendix 17.

Discussion: Parts of RSA 485-A were added to the NHCP in the 1996 RPI; in 2001's Autoincorporation, most remaining sections were also added. Two pieces of legislation, one in 2001 and one in 2002, made changes to relevant sections:

- (Section 4, in 2002) The change addresses a previous oversight in the Department of Environmental Services' duties regarding waste disposal of dental amalgam/mercury. For years, NH has had concerns about mercury-contaminated fish, and the state set limits on consumption. Addition of this small sub-para puts environmental responsibility on dental offices to make proper disposal. Like any other business that generates wastewater containing contaminants, dental offices must meet state guidelines established by DES. This is a minor change to the *uses subject to management* approvability area.

- (Section 6, in 2002) Addition of this sub-para directly relates to the previous bullet – specifying rules for dental waste management – and is referenced to RSA 485-A:4. Like above, this is a minor change to the *uses subject to management* approvability area.
- (Section 30, in 2001) Addition of sub-para I-a provides a supplemental fee for waste disposal per site so that DES can staff a member's position. That staffer will plan septage disposal with municipalities and integrate local and state planning. The fee and the change are minor ones in the *uses subject to management* approvability area.

To keep RSA 485-A fully current, adoption of these minor changes is warranted.

s.

RSA 674:36

Change

Applicable policies: 1,8

Page Numbers: 3-8, 3-36

AMENDED ANALYSIS This act establishes the village plan alternative subdivision in zoning and land use planning. Village plan alternative subdivision grants a developer or owner of land the option to develop a limited portion of the property in an expedited manner and without certain dimensional requirements while keeping the major portion of the property in agriculture, forestry, conservation, or public use. It is also AN ACT relative to municipal limitation of renewable energy systems.

See complete text of RSA 674:36 with changes at Appendix 18.

Discussion: Four sections of RSA 674 (Local Land Use Planning) were added in 2001 during Autoincorporation of the nonpoint program. Local planning in the form of subdivision regulations was modified in 2002 to add provisions for such areas as renewable energy sources and retention of open space/wildlife habitat. Such a change is in consonance with the governor's focus on sprawl prevention. All existing land use planning tools remain in effect. These changes augment such tools. The change is a minor one in the *uses subject to management* approvability area.

3. POLICY CHANGE:

a. The current NH Coastal Program Policy #13 (dates from 1988's FEIS document) reads as follows:

"Allow only water dependent uses and structures on State properties in Portsmouth-Little Harbor, Rye Harbor, and Hampton-Seabrook Harbor, at the State Port Authority, the State Fish Pier and State beaches (except those uses or structures which directly support the public recreation purpose). Allow only water dependent uses and structures over waters and wetlands of the State. Encourage the siting of water dependent uses adjacent to public waters."

Analysis: That policy, as written in 1988, did not properly account for all over water structures, because some existing structures (over State waters) at that time were not "only water dependent" as the policy purports. To correct this situation as well as to fix the outdated reference to the "State Port Authority," revision of the policy is needed. The 1989 version of RSA 482-A:26 then named "Residential Use Prohibited" did not allow for maintenance of over-water dwellings. In the mid 1990s, owners of such properties attempted to get RSA 482-A:26 abolished entirely. Such a move, if approved, would have allowed construction of over-water dwellings. To address this potential reversal, the State of NH opted for a compromise and "retreated" from its previous stance (no construction) by adding in 1998 sub-paragraphs III through V to RSA 482-A:26 (see Appendix 13) and renaming the section "Dwellings Over Water." The statute change provided guidelines for maintenance of such (pre) existing dwellings, while maintaining a ban on new construction any over-water dwellings. Further background investigation shows that the State of NH has only six existing (non-water dependent) structures, of which half (3) contain dwellings, in coastal waters. Structures on inland lakes, not in the coastal zone, are not germane to this discussion.

b. The 1998 change to RSA 482-A:26 (See para 2.n. above) recognized the oversight of previously existing (non-water dependent) structures. Under the guidelines for construction on existing structures, the footprint or outside dimensions of any such structure could not be enlarged. The RSA change added helpful definitions (RSA 482-A:26, IV) that only apply to this subject, and not to the entire statute. The NHCP proposes to amend the text of Policy 13 as follows – to address the dwellings/structures issue and correct other minor changes:

"Allow only water dependent uses and structures on State properties in Portsmouth-Little Harbor, Rye Harbor, and Hampton-Seabrook Harbor, at ~~the State Port Authority,~~ ~~the State port and Fish Pier facilities~~ and State beaches (except those uses or structures which directly support the public recreation purpose). For new development, ~~allow only water dependent uses and structures over waters and wetlands of the State.~~ Allow repair of existing over-water structures within guidelines. Encourage the siting of water dependent uses adjacent to public waters."

Analysis: The 1998 statutory change is meant to address all such over-water structures, of which there are dozens on larger NH lakes (outside the NH coastal boundary). It is fair to say that in submitting Policy #13, written ten years prior to 1998's statute change, the State

of NH did not fully inventory over-water structures in the coastal zone. In that intervening 10-year period, the state did not require removal of any "non-water dependent" structure either. The NH Legislature agreed to the 1998 change based upon inputs from constituents who argued that their pre-existing structures should be "grandfathered." The NH Legislature did not give "carte blanche" and allow new construction of over-water structures. With correction of a statutory oversight, NH now asks that its relevant coastal policy be corrected to coincide with the amended statute. The implications of this "retreat" to the NHCP are limited in that only a handful of structures (over tidal waters) are at stake. NH did not risk legal problems by forcing such structures to be removed when this section of the statute was added (1989). The other changes related to the port and state fish piers are minor updates based upon other legislation (recodification of RSA 271-A into RSA 12-G) which caused the Policy 13 language to become outdated. Rather than adopt the full title terminology (e.g. division of ports and harbors), the generic "port" and "fish pier" language is preferred and would be more enduring if further changes evolve around the Pease Development Authority.

In terms of precedent, this change of Policy #13 is necessary to account for structures that existed over-water (tidal) at the time the NHCP policy entered into being (1988). The NHCP has not changed one of its policies since 1988. This policy change is not a knee-jerk reaction to legislation. The NH Legislature must address the concerns of its constituents and that's what it did in 1998 when it revised RSA 482-A:26. NHCP enforceable references should coincide with current legislation/statutory guidance. The after-the fact update of this statute change in an RPC caused the NHCP to re-examine one of its policies which was shown to have an improper foundation. Inclusion of the change to RSA 482-A:26, along with the revised Policy 13, will correct the management of such structures (*uses subject to management*) in the coastal zone. Should another NHCP policy require (future) change, NHCP staff will analyze it in similar fashion, and then decide whether to amend the policy.

Along with the justification in para 2.n. (the RSA 482-A:26 change), NHCP considers this change in Policy #13 to be minor in the *uses subject to management* program approvability area. It is not a change in use, per se; rather it is a correction of the documentation describing such uses. Such an inaccurate label of the use (over-water structures) has existed since the NHCP was formally approved in 1988.

The final corrected version of Policy #13 would read as follows:

"Allow only water dependent uses and structures on State properties in Portsmouth-Little Harbor, Rye Harbor, and Hampton-Seabrook Harbor, at State port and fish pier facilities and State beaches (except those uses or structures which directly support the public recreation purpose). For new development, allow only water dependent uses and structures over waters and wetlands of the State. Allow repair of existing over-water structures within guidelines. Encourage the siting of water dependent uses adjacent to public waters."

4. Supporting References to Legislative Changes to RSAs in 2001/2002.

All the text in the Appendices was derived from the NH Laws On-Line web site:

www.gencourt.state.nh.us/rsa/html/indexes/.

The NH Legislature is also called the "General Court." Under that site, you can check on the full text of any statute section (current version, with latest changes) by clicking the "Browse" option. Should you select the "LSA or List of Sections Affected" option, you will see the Legislature's language of each "Act," much of which was used in the italicized "Analysis" of paragraph 2 above, as well as the revised text of the applicable statute changed by the Act. To gain access, you select the RSA from a pull-down menu, and also choose the "Chapter" number and "Legislative Year" – all of which are cross-referenced in the chart below:

Appendix	RSA	RSA Section	Legislative Year	Chapter
1	12-G	1	2001	290:6
	12-G	2	2001	290:6
	12-G	3	2001	290:6
	12-G	39	2001	290:6
	12-G	42	2001	290:6
	12-G	43	2001	290:6
	12-G	45	2001	290:6
	12-G	46	2001	290:6
2	230	13	1992*	150:4*
N/A	271-A	All	2001	290:19
3	21-O	5-a	2002	210:1
4	79	10	2001	90:2
5	125-C	2	2001	293:4
	125-C	4	2001	293:5
	125-C	6	2001	293:6
6	146-A	12	2002	257:9
7	162-C	1	2001	249:2
	162-C	2	2001	249:3
8	162-H	3	2002	247:2
9	211	19-a	2001	290:9
	211	62-c	2001	290:10
	211	64-b	2001	252:9 & 10
10	227-H	5	2002	148:5
11	270-D	2	2002	272:13
	270-D	2-a	2002	254:4
	270-D	2-b	2002	254:5
	270-D	2-c	2002	272:11
	270-D	10	2002	272:2
	270-D	11	2002	272:3
	270-D	13	2002	272:4&5
	270-D	14	2002	272:6
	270-D	17	2002	272:7
	270-D	19	2002	272:8
12	430	31-b	2001	167:1
13	482-A	2	2002	272:14
	482-A	3	2001/2002	144:1/272:15
	482-A	11	2002	272:17
	482-A	26	1998/2002	23:1/272:16
14	483	15	2002	75:1

Appendix	RSA	RSA Section	Legislative Year	Chapter
15	483-B	1	2002	263:1
	483-B	4	2002	169:1/263:2 to 7
	483-B	6	2002	263:8
	483-B	9	2002	114:1/263:9
	483-B	11	2002	263:10
	483-B	12	2001	290:15
	483-B	17	2002	263:11
	483-B	18	2002	169:2
	483-B	19	2002	263:12
	483-B	20	2002	114:3
16	485	4	2002	141:3
	485	24	2002	141:2
	485	41	2002	8:9
17	485-A	4	2002	96:3
	485-A	6	2002	96:4
	485-A	30	2001	128:2
18	674	36	2002	73:3/236:4

NOTE: In this table “*” means that the legislative act information is not available “on line” due to the age of the change (only the last 4 years are in the system). The current text of the RSA section *is* available.